

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Gregory Rickards
AM Op 1 Dept 3 Team 307
Intl TAS Liaison

from: Pamela Wilson Fuller
Senior Technician Reviewer
(Procedure & Administration)

subject: Recovery of overpayment offset to tax liability

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether taxpayer ("TP") made timely claims for refund.

FACTS

Taxpayer timely filed returns for tax years 2002-2005 and received refunds for each tax year. The Internal Revenue Service later adjusted TP's income, tax, and credits for 2002-2005, creating balances due for each of those years. The Service sent TP balance due and levy notices. TP filed a Form 843, Claim for Refund and Request for Abatement on July 18, 2006. From February 2007 through 2011 the Service then credited TP's overpayments from tax years 2006-2010 to the balances due for 2002-2005. TP subsequently filed another Form 843 on March 12, 2007. The Service's records show that TP contacted the Service numerous times between 2007 and 2011 regarding the balances due and offsets. The Service never sent TP a disallowance notice. The Service has now determined that it had erroneously adjusted TP's income, credits and tax due to a miscommunication between the IRS and another federal agency.

LAW AND ANALYSIS

Section 6511(a) provides that claims for refund of tax for which a taxpayer is required to file a return must be filed “within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later.” Section 6511(b) provides that no refund will be allowed if the taxpayer fails to file a claim within the period prescribed in 6511(a). Pursuant to section 6511(b)(2), if the claim is filed within the 3-year period prescribed in 6511(a), the amount of the refund is limited to the amount paid within 3 years plus extensions of the filing of the claim. If the claim was not filed within the 3-year period, the refund amount is limited to the amount paid within 2 years preceding the refund claim. I.R.C. § 6511(b)(2)(B).

In general, a taxpayer seeking a refund of income tax must file a timely claim that meets the requirements of Treas. Reg. § 301.6402-3. However, it is well established that an informal claim for refund (one that does not comply with the formal requirements of the statute and regulations) will suffice as long as it requests a refund and fairly advises the Service of the nature of the taxpayer’s claim. United States v. Kales, 314 U.S. 186, 194 (1941). There are no bright line rules as to what constitutes an informal claim. Turco v. Commissioner, T.C. Memo. 1997-564. Each case must be decided on its own particular set of facts. Id. The relevant question is whether the Service knew or should have known that a refund claim was being made. Id. Also, an informal claim must have some written component. Id.

In this case, the first offset took place in February 2007. TP filed a Form 843 in March 2007, requesting a refund of the offset amount. The Service’s records indicate that TP subsequently made informal claims for refund within two years after the additional offsets were made. Thus, each claim was timely pursuant to the 2-year rule in section 6511(a). The amount of each claim is not subject to limitation under section 6511(b)(2)(B) because, in each instance, the entire amount of the tax was paid within 2 years of the filing of the claim.

[REDACTED]

[REDACTED]



CONCLUSION

TP's claims for refund for the 2002-2005 tax years were timely.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4940 if you have any further questions.